

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.08.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH
and
THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2192 of 2016
and
CMP.Nos.15697 of 2016 and 8081 of 2017

Royal Sundaram Alliance Insurance Company Ltd
Sundaram Towers,
Nos.45 & 46 Whites Road,
Chennai - 600 014. ..Appellant/3rd Respondent

..VS..

1. Priya .. 1st respondent/ claimant
2. T.Arulmurugan
3. Thangavel ..Respondent 2 & 3/Respondent1 & 2
4. The Managing Director,
Tamil Nadu State Transport Corporation,
Ramakrishna Road, Salem. ..4th Respondent/4th respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 27.07.2015 passed by the Motor Accidents Claims Tribunal, IV Additional District Court, Erode District, Bhavani in MCOP No.482/10.

For Appellant : Mr.M.B.Raghavan
For R1 : Mr.T.R.Sathya Mohan

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

This appeal has been preferred by M/s.Royal Sundaram Alliance Insurance Company Limited (hereinafter referred to as 'the insurance company') against the judgment and decree dated 27.07.2015 passed by the Motor Accident Claims Tribunal, IV Additional District Court, Erode District, Bhavani (hereinafter mentioned as 'the Tribunal') in MCOP.No.482 of 2010.

2.Brief facts as are born out from the records of the Original Petition, are as under:

2.1 On 13.05.2010 at about 2.30am, the first respondent herein by name Priya, had travelled in a bus bearing

Regn.No.TN30 N 0603 belonging to the Tamil Nadu State Transport Corporation. When the bus was proceeding from Attur to Salem Main Road, at Chellipalayam near Green Park School, a lorry bearing Regn.No.TN54 Y 8284 belonging to the third respondent herein and insured with the appellant insurance company, came in a rash and negligent manner from the opposite direction and dashed against the bus and caused the accident, as a result of which, the first respondent along with other passengers, sustained multiple injuries all over the body. Immediately, she was admitted in Attur Government Hospital and thereafter, shifted to Ganga Hospital, Coimbatore for treatment. Due to the accident, her right leg was fully amputated. Hence, she filed a petition before the Tribunal claiming a sum of Rs.60,00,000/- as compensation.

2.2 It is stated in the claim petition that the first respondent/claimant was aged about 23 years and unmarried at the time of accident. She completed the B.Sc degree in Computer Science through correspondence in Annamalai University and Diploma in Computer Technology. During the relevant point of time, she was teaching spoken English for students and employees belonging to the Electricity Board by way of home tuition and also working as Customer Care-cum-Sales Executive in M/s.Vodaphone and Airtel Companies and was earning a minimum sum of Rs.7,000/- per month.

3.The appellant insurance company resisted the claim petition by filing a counter statement, wherein, it is stated that the accident had occurred due to the rash and negligent driving of the driver of the bus and hence, they are not liable to pay compensation to the claimant. It is further stated therein that the compensation claimed under various heads are fanciful, exorbitant and without any basis.

4.Before the Tribunal, on the side of the first respondent/claimant, the first respondent/claimant examined herself as P.W.1, besides examining one Dr.R.Krishnasamy and Babu as P.W.2 and P.W.3 respectively and twenty documents were marked as Exs.P1 to P20. On the side of the appellant insurance company, no witness was examined, however, a copy of the original petition along with court notice was marked as Ex.R1. On evaluating the same, the Tribunal came to a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry belonging to the third respondent herein and insured with the appellant insurance company and awarded a sum of Rs.18,04,006/- as compensation to the first respondent/claimant, under the following heads:

Loss of income due to permanent disability at 67%	- Rs.7,63,800/-
Medical expenses	- Rs.1,15,206/-
Extra Nourishment	- Rs. 25,000/-
Pain and suffering	- Rs.1,00,000/-
Bystander Expenses	- Rs.4,80,000/-
Loss of Amenities	- Rs.1,00,000/-
Loss of future prospects	- Rs.2,00,000/-
Transport expenses	- Rs. 20,000/-
	
Total	-Rs.18,04,006/-
	

Aggrieved over the same, the appellant insurance company is before this Court with the present appeal.

5.The learned counsel for the appellant insurance company submitted that the present appeal is filed only to question the quantum of compensation awarded by the Tribunal. With regard to the quantum of compensation, the learned counsel submitted that the Tribunal, without appreciating the evidence adduced by the parties in proper perspective, awarded a huge sum of Rs.18,04,006/- as compensation. According to the learned counsel, a sum of Rs.4,80,000/- awarded by the Tribunal towards Bystander Expenses, cannot be sustainable in law as well as on facts. Thus, the learned counsel prayed that the compensation awarded by the Tribunal has to be reduced by making proper calculation.

6.On the contrary, the learned counsel for the first respondent/claimant submitted that the Tribunal has considered all the oral and documentary evidence led by the parties and awarded the compensation, which is just, fair and reasonable and which warrants no interference by this Court.

7.We have carefully considered the submissions made by the learned counsel on either side and also perused the records placed before us.

8.Since the appeal is filed only to challenge the quantum of compensation awarded by the Tribunal, there is no necessity for this Court to traverse into the other aspects of the award.

9.On a perusal of the award, we find that the Tribunal awarded a sum of Rs.1,15,206/- towards medical expenses as mentioned in the medical bills, which were marked as Exs.P5 (Rs.56,135/-), P6 (Rs.11,821/-), P7 (Rs.35,000/-), P8 (Rs.12,000/-) and P17 (Rs.250/-). As the compensation awarded under the head "medical expenses" is based on the documentary evidence as stated above, the same is hereby confirmed.

10.Regarding the compensation awarded under the head "loss of income due to permanent disability", the Tribunal has awarded a sum of Rs.7,63,800/- (Rs.5,000/- x 67% x 12 x 19), which, in our opinion, has to be recalculated by separating the same into two heads viz., "permanent disability" and "loss of income". Accordingly, the same are hereby recalculated.

11.It is the case of the first respondent/claimant, who was examined as P.W.1 before the Tribunal that she was teaching spoken English for student and employees belonging to the Electricity Board by way of home tuition and was earning a sum of Rs.7,000/- per month. She was also working as Customer Care-cum-Sales Executive in M/s.Rich Tech Solution India Pvt. Ltd, Coimbatore, which was under the Management of M/s.Vodaphone and Airtel Companies and was earning a sum of Rs.11,000/- per month at the time of accident. Due to the amputation of her right leg, she is unable to lead her day to-day life. She even finds it difficult to attend the natural calls, without the help of others. She further stated in her evidence that her marital life remained bleak and her entire future has become clueless and she is groping in the dark. She also stated that her father had died and her mother is also handicapped. Her brother already got married and is living separately. As such, she is the only person to take care of her mother. Though the first respondent/claimant claimed that she was earning a sum of Rs.7,000/- by taking home tuition and Rs.11,000/- by working as Customer Care-cum-Sales Executive, no tangible evidence was adduced to substantiate the same and hence, the Tribunal has taken a sum of Rs.7,500/- approximately as the monthly income of the injured, from which, the Tribunal deducted 1/3rd amount towards personal expenses. However, we are of the view that considering the facts and circumstances of the case, it is just and appropriate to fix a sum of Rs.7,000/- as the monthly income of the injured.

12.For assessing the percentage of permanent disability, the Tribunal has taken into consideration the evidence of P.W.2/Doctor and Exs.P16-disability certificate and P18-X Ray. It is the evidence of P.W.2 that due to the injuries sustained in the accident, the right leg of the first respondent/claimant/injured was fully amputated and her permanent disability is at 70%. His evidence was corroborated by Exs.P16-disability certificate and P18-X Ray. However, the Tribunal has taken the permanent disability of the injured at 67%, after deducting 3% towards pain and suffering. In our view, to meet the ends of justice, it would be appropriate to take the entire percentage of permanent disability as assessed by P.W.2 i.e., 70% for the purpose of determining the compensation.

13.Considering the age of the first respondent/claimant, who was 23 years at the time of accident, the proper multiplier to be adopted is '18'. Accordingly, the multiplier '19' adopted

by the Tribunal is hereby reduced to '18'. Thus, the compensation under the head "loss of income" is determined as under:

Rs.7,000/- x 70% x 12 x 18 = Rs.10,58,400/-

By awarding a sum of Rs.2,000/- for each percentage of permanent disability, the compensation under the head "permanent disability" works to Rs.1,40,000/- (Rs.2000/- x 70%).

14.Considering the fact that due to the amputation of the right leg of the first respondent/claimant, her marital life is questionable and her future prospects will be bleak, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of amenities and Rs.2,00,000/- towards loss of future prospects, which appear to be fair, just and reasonable and the same are hereby confirmed. Consequent to the same, the compensation of Rs.4,80,000/- awarded by the Tribunal under the head "Bystander expenses" is unwarranted and the same is hereby set aside.

15.Considering the nature of the injuries sustained by the first respondent/claimant in the accident and the period of treatment taken by her for the same, a sum of Rs.1,00,000/- awarded by the Tribunal towards pain and suffering is fair, just and reasonable and the same is hereby confirmed. Similarly, a sum of Rs.25,000/- towards extra nourishment and Rs.20,000/- towards transport expenses appear to be very much reasonable and the same are also hereby confirmed.

16.In view of the above, the compensation awarded by the Tribunal to the tune of Rs.18,04,006/- is hereby reduced to Rs.17,59,000/-, the break up details of which are as follows:

Loss of income	-Rs.10,58,400/-
Permanent disability	- Rs.1,40,000/-
Medical expenses	- Rs.1,15,206/-
Extra Nourishment	- Rs. 25,000/-
Pain and suffering	- Rs.1,00,000/-
Loss of Amenities	- Rs.1,00,000/-
Loss of future prospects	- Rs.2,00,000/-
Transport expenses	- Rs. 20,000/-
	
Total	-Rs.17,58,606/-
	
Rounded off at Rs.17,59,000/-	

17.Accordingly, the appellant insurance company is directed to deposit the aforesaid modified compensation amount after deducting the amount already deposited, if any, along with proportionate interest at 7.5% p.a, to the credit of MCOP.No.482/2010 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Erode District, Bhavani,

within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the entire compensation amount lying in the deposit.

18.In the result, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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To
The Motor Accidents Claims Tribunal,
IV Additional District Court, Erode District, Bhavani

COPY TO.

The Section Officer,
V.R. Section, High court,
Madras 104.

+1cc to Mr.M.P.GOPALAN ASSO. Advocate, S.R.No. 61265/17

C.M.A.No.2192 of 2016

SV (CO)
TR(27/11/2017)

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